

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

PATRICK KEOWN,

Cause No. CV 07-33-H-DWM-RKS

Plaintiff,

vs.

**FINDINGS AND RECOMMENDATION
OF UNITED STATES MAGISTRATE
JUDGE TO DISMISS COMPLAINT**

STATE OF MONTANA and Others,

Defendants.

This matter comes before the Court on Plaintiff's Complaint filed pursuant to [42 U.S.C. § 1983](#) on June 4, 2007. (Document 2). The Court has federal question jurisdiction pursuant to [28 U.S.C. § 1331](#).

On April 2, 2008, the Court issued an Order finding that Plaintiff's Complaint failed to state a claim upon which relief could be granted and allowing Plaintiff the opportunity to file an Amended Complaint. (Document 18). Plaintiff failed to respond to the Court's Order and has not filed an Amended Complaint. For the reasons set forth in the Court's Order of April 22, 2008, the Court finds that Plaintiff has failed to state a claim upon which relief may be granted and failed to name a Defendant who is not entitled to immunity. Plaintiff's Complaint should, therefore, be dismissed.

The Prison Litigation Reform Act prohibits prisoners from bringing in forma pauperis civil actions if the prisoner has brought three or more actions in federal court that were dismissed for frivolousness, maliciousness, or for failure to state a claim. [28 U.S.C. § 1915\(g\)](#). The Court

is going to designate this case as a “strike” under this provision because Plaintiff’s allegations fail to state a claim. For this same reason, the Court will certify that any appeal of this matter would not be taken in good faith. That is, the issues raised in this matter are frivolous.

Based on the foregoing, the Court enters the following:

RECOMMENDATION

1. Plaintiff’s Complaint (Document 2) should be **DISMISSED**.
2. The Clerk of Court should be directed to have the docket reflect that this dismissal counts as a strike pursuant to [28 U.S.C. § 1915\(g\)](#).
3. The Clerk of Court should be directed to have the docket reflect that the Court certifies pursuant to Rule 24(3)(1) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. Plaintiff’s claims are so frivolous that no reasonable person could suppose that an appeal would have merit.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATION AND
CONSEQUENCES OF FAILURE TO OBJECT**

Pursuant to [28 U.S.C. § 636\(b\)\(1\)](#), Plaintiff may serve and file written objections to this Findings and Recommendations within ten (10) business days of the date entered as indicated on the Notice of Electronic Filing. Thereafter, a district judge will make a de novo determination of those portions of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge.

DATED this 2nd day of June, 2008.

/s/ Keith Strong
Keith Strong
United States Magistrate Judge